FILED

(1)

No. 02 1778 JUN 4 - 2003

OFFICE OF THE CLERK

In The

Supreme Court of the United States

ZHENHUAN MA, SHANG-TING SUNG, AIZHU SU, and CHUNSHENG TIAN, on behalf of themselves and all others similarly situated,

Petitioners,

vs.

KAJIMA CORPORATION, KAJIMA CONSTRUCTION SERVICES, INC., KAJIMA DEVELOPMENT CORPORATION, KAJIMA ENGINEERING AND CONSTRUCTION, INC., KAJIMA INTERNATIONAL, INC., KAJIMA U.S.A., INC., MITSUI & CO., LTD., MITSUI & CO. (USA), MITSUBISHI CORPORATION, MITSUBISHI INTERNATIONAL CORPORATION, MITSUI MINING CO., LTD., MITSUI MINING USA INC., MITSUBISHI CORPORATION, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

MILBERG WEISS BERSHAD HYNES & LERACH LLP
WILLIAM S. LERACH
ERIC ALAN ISAACSON
(*Counsel of Record*)
401 B Street, Suite 1700
San Diego, CA 92101
Telephone: 619/231-1058

Counsel for Petitioners

Dated: June 4, 2003

[Additional counsel appear on signature page.]

QUESTION PRESENTED

When private parties assert tort or contract claims that arose overseas before or during a time of war, does the federal power over foreign affairs, recognized in *Zschernig v. Miller*, 389 U.S. 429 (1968), automatically preempt a State's law allowing its courts to adjudicate those claims, and regulating the period when the claims may be timely filed in order to be litigated in the State's courts?

PARTIES

Plaintiffs-Appellants Before the Ninth Circuit:

Josef Tibor Deutsch, for himself and as the survivor of George Deutsch, Woodrow M. Hutchison, Lester I. Tenny, Shirley M. Rubenstein, Julia E. Stevenson, Glen Leroy, Raymond Heimbuch, Vivian O. Johnson, William R. Lowe, Sam P. Buse, Alfred Berest, Edwin F. Lindros, Michael Bibin, J. S. Gray, Karl William Holt, Norman R. Matthews, Darrel D. Stark, Carmel Zipeto, Melody Solis, Harry Corre, Garth G. Dunn, James O. King, Perfecto Llanza, Alberto Saldejeno, Acelopio Galedo, Generoso Jacob, Ernesto Santo Domingo, Imelda Santo Domingo, Manuel A. Eneriz, Dexter Eneriz, Executor of the Estate of Manuel A. Eneriz, Ralph Levenberg, Harold W. Poole, Ernest Loy, Francis W. Agnes, Robert C. Clark, Clarence S. Kellogg, Suk Yoon Kim, Zhenhuan Ma [Petitioner], Sa Son Sin, Ruben Resus, Carlos Cadenilla, Shang-Ting Sung [Petitioner], Raymond Wheeler, Alec Charles Murphy, William Schmitt, Hendrick Zeeman, Tammerus Willem Carter-Visscher, David Clarke, Willem Hendrik De Haan, Jae Sik Choe, Frank A. Mente, Neville J. Booker, Aizhu Su [Petitioner], Chunsheng Tian [Petitioner], Do Geun Oh, Eung Chang Lee, Yong Hae Lee, Gloria Tyler Alfano, Madeline Felkins, Warren Carringer, Dr. Howard Friedman, Maj. Richard Gordon, Oakie Dent Pack, H. Joseph Terrence aka Joseph E. Terfansky, Franklin D. Gross, Frederick M. Fullerton, Jr., Erma L. Weimer, Arthur Titherington, Henry George Blackham, Fergus Dunsmore McGhie, and Finnie B. Price.

PARTIES – Continued

Defendants-Appellees Before the Ninth Circuit:

Turner Corporation, Kitchell Corporation USA, Hochtief AG, Mitsubishi Materials Corporation, Mitsubishi Materials USA Corporation, Mitsubishi Corporation, Mitsubishi International Corporation, Mitsubishi Heavy Industries, Ltd., Mitsubishi Heavy Industries America, Inc., Mitsui & Co. Ltd., Mitsui & Co. (USA), Inc., Mitsui Mining Co. Ltd., Mitsui Mining USA Inc., Ishihara Sangyo Kaisha, Ltd., Ishihara Corporation, Isk Americas, Inc., Nippon Steel Corporation, Nippon Steel Trading Co., Ltd., Nippon Steel USA Inc., Nippon Steel Trading America, Japan Iron & Steel, Yawata Iron & Steel, Fuji Iron & Steel, Mitsubishi Shoji, Sumitomo Corp., Sumitomo Commercial Company, Taiheiyo Cement, Onoda USA Inc., Kreha Corporation of America, Inc., Showa Denko America, Inc., Furukawa Electric North America Inc., Nippon Sharyro USA, Inc., Sumitomo Heavy Industries (USA), Ishihara Corporation U.S.A., Nippon Sharyo Ltd., Ishikawajima Harima Heavy Industries Ltd., Ihi Inc. Sumitomo Heavy Industries Ltd., Sumitomo Heavy Industries (USA) Inc., Kajima Corporation, Kajima Construction Services, Inc., Kajima Development Corporation, Kajima Engineering and Construction, Inc., Kajima International, Inc., Kajima U.S.A., Inc., Mitsui Engineering & Shipbuilding Co., Ltd., Paceco Corporation, Mitsui Bussan Kaisha, Sumitomo Corp. of America, Kureha Corporation of America, Furukawa Electric North America, Inc., Showa Denko K K, Showa Denko America, Inc., Showa Kogyo, Japan Energy Corp., Japan Energy USA, and Irvine Scientific Sales.

TABLE OF CONTENTS

		Page
QUESTION PRESENTED		i
PARTIES		ii
I.	REPORTS OF THE DECISIONS BELOW	1
II.	JURISDICTION	2
III.	CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	2
	A. Federal Power over Foreign Affairs	2
	B. California Civil Procedure Code §354.6	4
	C. Statutory Notes to California Civil Procedure Code §354.6	6
IV.	STATEMENT OF THE CASE	7
	A. Nature of the Case	7
	B. Basis of Jurisdiction Below	10
	C. Decisions Below	11
	D. Related Litigation Now Pending Before This Court	13
V.	REASONS FOR GRANTING THE WRIT	13
	1. The Ninth Circuit's Extension of Foreign Affairs Preemption Finds No Support in *Zschernig*	16
	2. The Decision Below Upsets the Constitutional Balance of State and Federal Power for the Benefit of International Wrongdoers	19

TABLE OF CONTENTS – Continued

Page

3. The States Are Constitutionally Entitled to Regulate the Time for Filing Suit in Their Courts 22

VI. CONCLUSION 25

TABLE OF AUTHORITIES

Page

CASES

Altmann v. Republic of Austria, 317 F.3d 954 (9th Cir. 2002) 20

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986) 15

Bialo v. Western Mut. Ins. Co., 95 Cal. App. 4th 68, 115 Cal. Rptr. 2d 3 (2002) 25

Burnham v. Superior Court of California, 495 U.S. 604 (1990) 19

Campbell v. Holt, 115 U.S. 620 (1885) 24, 25

Celotex Corp. v. Catrett, 477 U.S. 317 (1986) 15

Chalmers v. Baltimore & O. R. Co., 207 U.S. 142 (1907) 20

Chase Sec. Corp. v. Donaldson, 325 U.S. 304 (1945) 22, 24, 25

Deutsch v. Turner Corp., 317 F.3d 1005 (9th Cir. Jan. 21, 2003) 1

Deutsch v. Turner Corp., 324 F.3d 692 (9th Cir. Mar. 6, 2003) 1

Filartiga v. Pena-Irala, 630 F.2d 876 (2d Cir. 1980) ... 20, 22

G.D. Searle & Co. v. Cohn, 455 U.S. 404 (1982) 24

General Oil Co. v. Crain, 209 U.S. 211 (1908) 20

Gerling Global Reinsurance Corp. v. Low, 240 F.3d 739 (9th Cir. 2001), *later opinion*, 296 F.3d 832 (9th Cir. 2002), *cert. granted sub nom., American Ins. Assoc. v. Low*, No. 02-722, ___ U.S. ___, 123 S. Ct. 817 (Jan. 10, 2003) 13, 18

Goad v. Celotex Corp., 831 F.2d 508 (4th Cir. 1987) 20

TABLE OF AUTHORITIES – Continued

Page

Henry v. City of Rock Hill, 376 U.S. 776 (1964) 16

In re World War II Era Japanese Forced Labor Litig., 114 F. Supp. 2d 939 (N.D. Cal. Sept. 21, 2000) 1

In re World War II Era Japanese Forced Labor Litig., 164 F. Supp. 2d 1153 (N.D. Cal. Sept. 17, 2001) 1

In re World War II Era Japanese Forced Labor Litig., 164 F. Supp. 2d 1160 (N.D. Cal. Sept. 17, 2001) 1

Kadic v. Karadzic, 70 F.3d 232 (2d Cir. 1995) 20

Klinghoffer v. S.N.C. Achille-Lauro Ed Altri-Gestione, 937 F.2d 44 (2d Cir. 1991) 20

Le Roy v. Crowninshield, 15 F. Cas. 362 (No. 8,269) (C.C.D. Mass. 1820) 23

Leibig v. Superior Court, 209 Cal. App. 3d 828, 257 Cal. Rptr. 574 (1989) 25

Lent v. Doe, 40 Cal. App. 4th 1177, 47 Cal. Rptr. 2d 389 (1995) 25

Linder v. Portocarrero, 963 F.2d 332 (11th Cir. 1992) 20

M'Elmoyle v. Cohen, 38 U.S. (13 Pet.) 312 (1839) 23

Marootian v. N.Y. Life Ins. Co., No. CV-99-12073 CAS (MCx), 2001 U.S. Dist. LEXIS 22274 (Bankr. C.D. Cal. Nov. 30, 2001) 21

Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574 (1986) 15

Presbyterian Church of Sudan v. Talisman Energy, 244 F. Supp 2d 289 (S.D.N.Y. 2003) 20

TABLE OF AUTHORITIES – Continued

Page

Society of Cal. Pioneers v. Baker, 43 Cal. App. 4th 774, 50 Cal. Rptr. 2d 865 (1996) 25

St. Louis, I. M. & S. Ry. Co. v. Taylor, 210 U.S. 281 (1908).....20

Sun Oil Co. v. Wortman, 486 U.S. 717 (1988) 22, 23

Taiheiyo Cement Corp. v. Superior Court, 66 P.3d 1231, 2003 Cal. LEXIS 2794, 2003 Cal. Daily Op. Serv. 3746 (Apr. 30, 2003) 1

Taiheiyo Cement Corp. v. Superior Court, 105 Cal. App. 4th 398, 129 Cal. Rptr. 2d 451 (Cal. App. 2d Dist. Jan. 15, 2003) .....*passim*

Tietge v. Western Province of the Servites, Inc., 55 Cal. App. 4th 382, 64 Cal. Rptr. 2d 53 (1997).....25

Wells v. Simonds Abrasive Co., 345 U.S. 514 (1953).....22

Zschernig v. Miller, 389 U.S. 429 (1968).....*passim*

STATUTES, RULES AND REGULATIONS

U.S. Constitution Article I
§8 .....2, 3

§10 .....3, 4

U.S. Constitution Article II
§2 3

§3 3

28 U.S.C.
§1254(1)..... 2

§1331 11

§1350 .....10, 11

TABLE OF AUTHORITIES – Continued

Page

§1441 11

§2403(b) 2

California Civil Procedure Code

§340.9 25

§354.4(c) 25

§354.5(c) 25

§354.6 ..... *passim*

§354.6(a)(2) 8

§354.6(b) 8

§354.6(c) 8, 9, 25

Japan Constitution Article 18 18

Supreme Court Rules

Rule 16.1 16

Rule 29.4(c) 2

Federal Rules of Appellate Procedure

Rule 28(j) 12

California Rule of Court

Rule 976(d) 1

SECONDARY AUTHORITIES

Curtis A. Bradley & Jack L. Goldsmith, *Customary International Law as Federal Common Law: A Critique of the Modern Position*, 110 Harv. L. Rev. 815 (1997) 17

Jack L. Goldsmith, *Federal Courts, Foreign Affairs, and Federalism*, 83 Va. L. Rev. 1617 (1997) 17

TABLE OF AUTHORITIES – Continued

Page

Louis Henkin, *Foreign Affairs and the United States Constitution* (2d ed. 1996).....17

J. Story, *Commentaries on the Conflict of Laws, Foreign and Domestic* (3d ed. 1846)

§553 19

§554 19

I. REPORTS OF THE DECISIONS BELOW

The decision to be reviewed is reported as *Deutsch v. Turner Corp.*, 324 F.3d 692 (9th Cir. Mar. 6, 2003), *reprinted at* 1a-55a, which denies rehearing, amends, and supersedes the opinion originally reported as *Deutsch v. Turner Corp.*, 317 F.3d 1005 (9th Cir. Jan. 21, 2003), *reprinted at* 56a-108a.

The Ninth Circuit affirmed district court decisions reported as *In re World War II Era Japanese Forced Labor Litig.*, 164 F. Supp. 2d 1160 (N.D. Cal. Sept. 17, 2001), *reprinted at* 109a-150a; *In re World War II Era Japanese Forced Labor Litig.*, 164 F. Supp. 2d 1153 (N.D. Cal. Sept. 17, 2001), *reprinted at* 151a-159a; and *In re World War II Era Japanese Forced Labor Litig.*, 114 F. Supp. 2d 939 (N.D. Cal. Sept. 21, 2000), *reprinted at* 160a-177a.

An opinion in closely related litigation, in which the California Court of Appeal addressed the same foreign-affairs preemption issue as the Ninth Circuit but reached precisely the opposite conclusion, is reported as *Taiheiyo Cement Corp. v. Superior Court*, 105 Cal. App. 4th 398, 129 Cal. Rptr. 2d 451 (Cal. App. 2d Dist. Jan. 15, 2003), and is reprinted at 179a-218a. The California Supreme Court's recent order granting review, reported as *Taiheiyo Cement Corp. v. Superior Court*, 66 P.3d 1231, 2003 Cal. LEXIS 2794, 2003 Cal. Daily Op. Serv. 3746 (Apr. 30, 2003), is reprinted at 178a, and supersedes the lower court opinion while the matter is pending before the California Supreme Court. *See* Cal. Rule of Court 976(d).

II. JURISDICTION

The Ninth Circuit entered its initial judgment affirming the district court's decision below on January 21, 2003. 71a. On March 6, 2003, the Ninth Circuit denied Petitioners' timely petition for rehearing and amended the original opinion. 15a, 20a-23a. This Court's jurisdiction to review this petition is conferred by 28 U.S.C. §1254(1).

Because the decision below holds that California Civil Procedure Code §354.6 is unconstitutional, it appears that 28 U.S.C. §2403(b) may apply. The State of California, through its Attorney General, was notified of the proceeding and appeared below as *amicus curiae*, both before the district court and the Ninth Circuit, filing briefs and presenting argument defending §354.6's constitutionality. Thus, the California Attorney General is aware of the case, and is being served with a copy of this Petition, as required by Supreme Court Rule 29.4(c).

III. CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

A. Federal Power over Foreign Affairs

The federal government's power over foreign affairs arises from constitutional provisions in Article I and Article II conferring the power to regulate foreign commerce, make treaties, and wage war.

Article I, §8 gives Congress the power to "provide for the common Defence," (cl. 1), "[t]o regulate Commerce with foreign Nations" (cl. 3), "[t]o define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations" (cl. 10), "[t]o declare War, grant Letters of Marque and Reprisal, and make Rules

concerning Captures on Land and Water" (cl. 11), "[t]o raise and support Armies" (cl. 12), "[t]o provide and maintain a Navy" (cl. 13), "[t]o make Rules for the Government and Regulation of the land and naval Forces" (cl. 14); and "[t]o provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions" (cl. 15). U.S. Const. art. I, §8.

Article II, §2 provides that "[t]he President shall be Commander in Chief of the Army and Navy of the United States" (cl. 1), and "shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with Advice and Consent of the Senate, shall appoint Ambassadors" (cl. 2). U.S. Const. art. II, §2. Article II, §3 provides that the President "shall receive Ambassadors and other public Ministers." U.S. Const. art. II, §3.

Finally, Article I, §10 expressly limits the states' power to regulate foreign affairs – by prohibiting any State from entering treaties, alliances, or confederations, and from issuing letters of Marque and Reprisal:

> *No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal*; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.
>
> No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by

any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, *enter into any Agreement or Compact* with another State, or *with a foreign Power, or engage in War*, unless actually invaded, or in such imminent Danger as will not admit of delay.

U.S. Const. art. I, §10 (emphasis added).

B. California Civil Procedure Code §354.6

§354.6. Second World War slave or forced labor victims; heirs; actions for recovery of compensation; limitations

(a) As used in this section:

(1) "Second World War slave labor victim" means any person taken from a concentration camp or ghetto or diverted from transportation to a concentration camp or from a ghetto to perform labor without pay for any period of time between 1929 and 1945, by the Nazi regime, its allies and sympathizers, or enterprises transacting business in any of the areas occupied by or under control of the Nazi regime or its allies and sympathizers.

(2) "Second World War forced labor victim" means any person who was a member of the civilian population conquered by the Nazi regime, its allies or sympathizers, or prisoner-of-war of the Nazi regime, its allies or sympathizers,

forced to perform labor without pay for any period of time between 1929 and 1945, by the Nazi regime, its allies and sympathizers, or enterprises transacting business in any of the areas occupied by or under control of the Nazi regime or its allies and sympathizers.

(3) "Compensation" means the present value of wages and benefits that individuals should have been paid and damages for injuries sustained in connection with the labor performed. Present value shall be calculated on the basis of the market value of the services at the time they were performed, plus interest from the time the services were performed, compounded annually to date of full payment without diminution for wartime or postwar currency devaluation.

(b) Any Second World War slave labor victim, or heir of a Second World War slave labor victim, Second World War forced labor victim, or heir of a Second World War forced labor victim, may bring an action to recover compensation for labor performed as a Second World War slave labor victim or Second World War forced labor victim from any entity or successor in interest thereof, for whom that labor was performed, either directly or through a subsidiary or affiliate. That action may be brought in a superior court of this state, which court shall have jurisdiction over that action until its completion or resolution.

(c) Any action brought under this section shall not be dismissed for failure to comply with the applicable statute of limitation, if the action is commenced on or before December 31, 2010.

Cal. Civ. Proc. Code §354.6. (Added by Stats. 1999, c.216 (S.B. 1245), § 4, eff. July 28, 1999.)

C. Statutory Notes to California Civil Procedure Code §354.6

SECTION 1. (a) Thousands of victims of Nazi persecution, and the heirs of victims of Nazi persecution, are residents of the State of California.

(b) These victims of Nazi persecution have been deprived of their entitlement to compensation for their labor and for injuries sustained while performing that labor as forced or slave laborers prior to and during the Second World War.

(c) California has a moral and public policy interest in assuring that its residents and citizens are given a reasonable opportunity to claim their entitlement to compensation for forced or slave labor performed prior to and during the Second World War.

(d) To the extent that the statute of limitations applicable to claims for compensation is extended by this act, that extension of the limitations period is intended to be applied retroactively, irrespective of whether the claims were otherwise barred by any applicable statute of limitations under any provision of law prior to the enactment of this act.

SEC. 2. It is the intent of the Legislature, in addition to the provisions of this act, to enact additional public policy in any other case of proven patterns of slave labor employed by firms presently doing business in California that

served as the basis of ill-gotten wealth at the expense of victims who are residents of California.

SEC. 3. The Treasurer, the Public Employees Retirement System, and the State Teacher's Retirement System shall monitor and report to the Legislature on investments of the state and its pension funds in companies doing business in California, and affiliates of those companies, that owe compensation to victims of slave and forced labor from 1929 to 1945.

Sections 1 to 3 of Stats. 1999, c.216 (S.B. 1245), notes to Cal. Civ. Proc. Code §354.6.

IV. STATEMENT OF THE CASE

A. Nature of the Case

Before and during the Second World War, in the years 1929-1945, many civilians and prisoners of war were enslaved and forced to labor for private business in lands dominated by the Axis powers. Concerned that many such forced-labor victims had received no meaningful access to justice, and that with the passage of time courthouse doors would be forever closed to aging victims of World War II-era slave labor, California in 1999 enacted California Civil Procedure Code §354.6 – to provide that its state courts shall afford a forum before which a qualifying forced-labor victim may "bring an action to recover compensation" against any "entity or successor in interest thereof, for whom that labor was performed, either directly or through a subsidiary or affiliate," if the action is filed by December 31, 2010. Cal. Civ. Proc. Code §354.6.

Petitioners Zhenhuan Ma, Shang-Ting Sung, Aizhu Su, and Chunsheng Tian were Chinese civilians when they

were forced to labor, between 1929 and 1945, for certain Japanese corporations.[1] As such, they come within the statute's definition of a "Second World War forced labor victim," which encompasses "any person who was a member of the civilian population conquered by the Nazi regime, its allies or sympathizers" and was "forced to perform labor without pay for any period of time between 1929 and 1945, by the Nazi regime, its allies and sympathizers, or enterprises transacting business in any of the areas occupied by or under control of the Nazi regime or its allies and sympathizers." Cal. Civ. Proc. Code §354.6(a)(2).

In line with the long-standing rule that state courts may provide a forum to adjudicate "transitory" personal claims that arose abroad, subsection (b) of §354.6 provides that actions by qualifying forced-labor victims, or their heirs, seeking to recover compensation for labor performed, "may be brought in a superior court of this state, which court shall have jurisdiction over that action until its completion or resolution." Cal. Civ. Proc. Code §354.6(b). In line with the longstanding rule of domestic and international law that the forum may determine the time for filing suit, subsection (c) provides that "[a]ny action brought under this section shall not be dismissed for failure to comply with the applicable statute of limitation, if the

[1] Plaintiff Shang-Ting Sung was a Chinese civilian then, and today is a U.S. citizen and resident of California. *See* Ninth Circuit Excerpt of Record ("ER") at 64:¶13. Plaintiff Zhenhuan Ma, Aizhu Su, and Chunsheng Tian were Chinese civilians, and to this day reside in the People's Republic of China. ER at 139:¶¶13, 16; ER at 231:¶14.

action is commenced on or before December 31, 2010." Cal. Civ. Proc. Code §354.6(c).

The "Statutory Notes" accompanying §354.6 explain that the Legislature's purpose was simply to provide a forum and extend the time for filing forced-labor claims against companies currently doing business in California, so that victims of a horrible crime against humanity might get a long-overdue hearing on their claims. They had, the California Legislature found, long "been deprived of their entitlement to compensation for their labor and for injuries sustained while performing that labor as forced or slave laborers prior to and during the Second World War." Cal. Stats. 1999, c.216 §1(a)-(b) (S.B. 1245) (codified as notes to §354.6), *see* 6a-7a. They should be "given a reasonable opportunity to claim their entitlement to compensation for forced or slave labor performed prior to and during the Second World War." *Id.*, §1(c). "To the extent that the statute of limitations applicable to claims for compensation is extended by this act," the Legislature concluded, "that extension of the limitations period is intended to be applied retroactively, irrespective of whether the claims were otherwise barred by any applicable statute of limitations under any provision of law prior to the enactment of this act." *Id.*, §1(d).

The California Legislative Counsel's Digest to the bill which became §354.6 noted that "[e]xisting law authorizes actions to recover wages but requires various actions to be brought within specified periods of time." Cal. S.B. 1245 at 1 (Legislative Counsel's Digest (Feb. 26, 1999)). Viewing the statute as procedural in character, rather than as creating new substantive rights, the Legislature placed it in the California Code of Civil Procedure under Title Two:

Time of Commencing Civil Actions, Chapter 4: General Provisions as to the Time of Commencing Actions.

Plaintiffs, as Chinese civilian victims of World War II-era forced labor, accordingly filed suits that were timely under §354.6, asserting claims against the companies that had enslaved them and profited from their labor. Defendants are Japanese corporations (and their U.S. subsidiaries) doing business in California that forced plaintiffs, and others, to work as forced laborers during World War II.

Many cases were consolidated before the district court, the Honorable Vaughn R. Walker presiding. Most of those suits were filed in state court, but were removed to federal court on the ground that the tort and contract claims they asserted were somehow federal in character. Some were filed on behalf of Chinese or Korean civilians forced to labor for Japanese corporations, some on behalf of Filipinos, and still others on behalf of American and Allied POWs. Each involved claims against nongovernmental business corporations, for forced labor and involuntary servitude in Asia before and during the Second World War.

B. Basis of Jurisdiction Below

Plaintiff Ma's initial complaint was filed in federal court, and specifically invoked 28 U.S.C. §1350's provision that "[t]he district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." 28 U.S.C. §1350. *See Ma* Complaint, ¶¶11, 44-47, 9th Cir. ER at 236, 248-252. The district court exercised jurisdiction over the other cases, which were removed from state court, because it believed that "the complaints . . . , on their face, implicate the federal common law of foreign

relations." 164a (overruling objections to jurisdiction in related cases).

The district court clearly had jurisdiction under 28 U.S.C. §§1331 and 1350 for the *Ma* case. With respect to the removed cases, it exercised jurisdiction under 28 U.S.C. §§1331 and 1441. The Ninth Circuit rejected challenges to the district court's jurisdiction over the removed cases. 53a-55a.

C. Decisions Below

In two orders, the district court dismissed the claims advanced by American and Allied-national POWs and then those advanced by Filipino plaintiffs – on the ground that the claims were all barred by treaty. 160a-177a (Americans and Allied nationals); 151a-159a (Filipinos). Recognizing that claims of Chinese and Korean civilians were ***not*** barred by treaty, 112a-118a, the district court in a further order nonetheless proceeded to dismiss them as well – finding them barred by the doctrine of implied foreign-affairs preemption recognized in *Zschernig v. Miller*, 389 U.S. 429 (1968). *See* 109a, 119a-139a. Plaintiffs in the affected actions filed 28 appeals that, following an October 7, 2002, oral argument, were consolidated by the Ninth Circuit panel with a German Holocaust appeal, *Deutsch v. Turner*, No. 00-56673.

In the meantime, a parallel case addressing §354.6's constitutionality under *Zschernig*'s foreign-affairs preemption doctrine was proceeding in state court. On January 15, 2003, the California Court of Appeal issued an opinion holding that §354.6 merely provides a forum for, and extends the time to sue upon, certain already-existing

claims. *See* 179a, 191a-205a (*Taiheiyo Cement Corp. v. Superior Court*, 105 Cal. App. 4th 398, 417, 129 Cal. Rptr. 2d 451, 465 (Cal. App. 2d Dist. Jan. 15, 2003)). Because defining state-court jurisdiction and "establishing a statute of limitations is a state prerogative," the California Court of Appeal held in *Taiheiyo Cement* that §354.6 does not invade the federal government's control over foreign affairs recognized in *Zschernig*. *See* 202a. Plaintiffs promptly submitted FRAP Rule 28(j) letters, informing the Ninth Circuit panel of the new *Taiheiyo Cement* opinion.

Nonetheless, the Ninth Circuit issued an opinion the following week that reached exactly the opposite conclusion as *Taiheiyo Cement*, without citing the California appellate decision. 56a-108a. The Ninth Circuit ruled that §354.6 improperly "intrudes on the federal government's exclusive power to make and resolve war, including the procedure for resolving war claims," because "the provision concerns only acts that took place during the years leading up to the war and during the years of the war itself." 94a.

Plaintiffs called the conflict with *Taiheiyo Cement* to the *Deutsch* court's attention, but on March 6, 2003, the Ninth Circuit issued an Order denying rehearing and amending its opinion. "Whether substantive or procedural," the panel explained, "section 354.6 creates a special rule that applies only to a newly defined class of tort actions – actions brought by Second World War slave labor victims against the entities that enslaved them." 21a, 33a.

Because the claims at issue arose in a time of international conflict, "during the years leading up to the war and during the years of the war itself," 41a, the Ninth Circuit concluded California could not permit its courts to adjudicate

them without violating the federal government's war powers. *See* 41a.

On April 30, 2003, the California Supreme Court granted review in *Taiheiyo Cement*. *See* 178a.

D. Related Litigation Now Pending Before This Court

While this case was still pending before the Ninth Circuit, this Court granted certiorari to review a Ninth Circuit decision holding that provisions of California's Holocaust Victim Insurance Relief Act ("HVIRA") were not preempted under the implied doctrine of foreign-affairs preemption. *See Gerling Global Reinsurance Corp. v. Low*, 240 F.3d 739, 751-53 (9th Cir. 2001), *later opinion*, 296 F.3d 832 (9th Cir. 2002), *cert. granted sub nom., American Ins. Assoc. v. Low*, No. 02-722, ___ U.S. ___, 123 S. Ct. 817 (Jan. 10, 2003). The vitality and scope of *Zschernig*'s foreign-affairs preemption has been raised in that case, which is now styled *American Ins. Ass'n v. Garamendi*, No. 02-722, and was argued before this Court on April 23, 2003.

V. REASONS FOR GRANTING THE WRIT

This Court's review is needed to resolve an important question going to the very heart of our constitutional government's structure. The Ninth Circuit cited the federal power over foreign affairs as authority to strike down a state statute regulating state-court jurisdiction and procedure – a statute specifying the time and place for filing certain transitory tort and contract claims – merely because the claims at issue arose during a time of international conflict, before and during the Second World War.

Our constitutional scheme commits to the states, as questions of local law, the tasks of defining the jurisdiction of state tribunals and setting the time for filing claims in them. To hold, as the Ninth Circuit did, that a state law is invalid if it allows state courts to hear certain claims that arose before, or during, a time of war is to drastically rewrite the Constitution – with potentially far-reaching consequences in these times of international conflict, and war on terrorism. That those who commit intentional torts during times of war – or during periods of conflict preceding war – should be immune to all civil liability is a truly novel doctrine. And where the Ninth Circuit's blanket immunity for pre-war and war-time torts ends, is anyone's guess.

Thus, the doctrine of foreign-affairs preemption presents an important issue – going to the very heart of our constitutional federalism, and governing the proper relationship of the states to the federal government. That defining the doctrine's proper scope can warrant this Court's attention is apparent from the recent grant of certiorari to review the *Garamendi* case, where the Ninth Circuit *sustained* a California law against contentions that it impinged upon the federal government's foreign-affairs power.

Review is all the more appropriate in this case, where the Ninth Circuit construed a controversial doctrine so broadly that it found a constitutional conflict between the federal government's general foreign-affairs power, on the one hand, and a state's fundamental prerogative to regulate state-court jurisdiction and procedure, on the other hand – merely because a state statute addresses claims that arose in a time of international conflict, before or during a war. 41a.

Together with *Garamendi*, this case provides the opportunity better to define the proper scope of *Zschernig*'s foreign-affairs preemption, as more than one decision of this Court may be needed to clarify a murky area of law.[2] And differences in the record between *Garamendi* and this case will enable this Court better to flesh out the boundaries of foreign-affairs preemption that Petitioners believe the Ninth Circuit misinterpreted and misapplied below.[3]

Adding some urgency to the need for this Court's review is the fact that the Ninth Circuit issued its remarkable ruling shortly after the California Court of Appeal issued a carefully reasoned opinion in *Taiheiyo Cement* finding no such conflict between California law and the federal foreign-affairs power – requiring the California Supreme Court to grant review in order to deal with the embarrassing conflict between the two opinions. The California Supreme Court should not be put to that task when only this Court can authoritatively determine

---

[2] In 1986, for example, this Court issued not one but three critical opinions on the standards governing summary-judgment motions. *See Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986).

[3] *Garamendi* presents no issue concerning the States' power to define their courts' jurisdiction and local procedure – only a California statute mandating disclosures concerning European Holocaust-era insurance policies. *Garamendi*, moreover, involves matters as to which the federal government apparently took an active role, even negotiating the formation of a German Foundation to deal with European Holocaust-era insurance claims. The United States has done nothing, however, to help resolve claims of Chinese civilians who were enslaved and forced to labor by Japanese corporations between 1929 and 1945.

whether it was *Deutsch*, or *Taiheiyo Cement*, that reached the right conclusion.[4]

1. The Ninth Circuit's Extension of Foreign-Affairs Preemption Finds No Support in *Zschernig*

The Ninth Circuit relied on *Zschernig*, 389 U.S. 429, this Court's first and only decision invalidating a state law as interfering with the general federal power over foreign affairs. That *Zschernig* by no means compelled the result should be apparent from the fact that the Ninth Circuit's decision is flatly inconsistent with the California Court of Appeal's carefully reasoned opinion on the same issues in *Taiheiyo Cement*, *see* 194a-205a, which the California Supreme Court must now review. *See* 178a.

The two decisions reached opposite results because the Ninth Circuit broadly construed a decision that has been sharply questioned by distinguished jurists and scholars alike, who find compelling "reasons to think that *Zschernig*'s dormant foreign relations preemption retains

---

[4] If a decision in *Garamendi* will provide all the guidance that the California Supreme Court will need to decide *Taiheiyo Cement*, and that the Ninth Circuit needs to evaluate this case on remand, Petitioners respectfully ask the Court to grant certiorari and vacate the decision below, remanding to the Ninth Circuit for reconsideration in light of this Court's opinion in *Garamendi*. *See Henry v. City of Rock Hill*, 376 U.S. 776, 776-77 (1964); *see also* Supreme Court Rule 16.1 (providing for summary dispositions when appropriate). But it appears doubtful that a decision in *Garamendi* will be sufficient, as the records in the two matters vary from *Garamendi* in several respects. *See supra* n. 3.

little, if any, validity."[5] When the *Garamendi* case was argued before this Court in late April, the Chief Justice himself disparaged *Zschernig*, commenting: "I don't regard that as a very strongly reasoned opinion." *American Ins. Ass'n v. Garamendi*, No. 02-722, Transcript of Oral Argument at 7-8 (Apr. 23, 2003). If anything, *Zschernig* is an opinion to be narrowed, not extended to deprive state courts of the power to adjudicate private claims arising in a time of international conflict, "during the years leading up to [a] war," or "during the years of the war itself." 41a.

Although the Ninth Circuit cited *Zschernig*, moreover, its own analysis departed dramatically from this Court's decision in that case, which held only that states cannot use their courts to coerce foreign countries to change their political structure. *Zschernig* did not compel, or even authorize, the decision below.

Zschernig involved an Oregon probate statute, enacted during the Cold War and applied to deny citizens of Marxist nations the right to inherit property – based solely upon Oregon judges' approval or disapproval of the political regimes under which the foreign citizens lived. Because state judges used the Oregon probate law to investigate and denigrate the laws and internal administration of foreign governments, and because substantial evidence of

---

[5] Curtis A. Bradley & Jack L. Goldsmith, *Customary International Law as Federal Common Law: A Critique of the Modern Position*, 110 Harv. L. Rev. 815, 865 (1997); *see also* Louis Henkin, *Foreign Affairs and the United States Constitution* 165 n. * * (2d ed. 1996) ("[o]ne would be bold to predict that it [*Zschernig*] has a future life"); Jack L. Goldsmith, *Federal Courts, Foreign Affairs, and Federalism*, 83 Va. L. Rev. 1617, 1698-1706 (1997).

the law's "history and operation" showed that it had a "direct impact upon foreign relations," not just "'some incidental or indirect effect on foreign countries,'" the statute was held to be an unconstitutional "intrusion by the State into the field of foreign affairs." 389 U.S. at 432, 434, 441 (citation omitted); *see Gerling*, 240 F.3d at 753. State probate courts had "launched inquiries into the type of governments that obtain in particular foreign nations," and used the statute to conduct "minute inquiries concerning the actual administration of foreign law," and "into the credibility of foreign diplomatic statements." *Zschernig*, 389 U.S. at 433-35. This Court held that it is for the federal government, not the states, to decide if, when, and how to take coercive action designed to change another nation's laws and policies.

Section 354.6, by contrast, has no similar history of inappropriate application. It neither requires nor permits state courts to investigate or evaluate any foreign government's laws or policies. And it provides no mechanism for state courts to coerce foreign governments to change current or future policies. To the contrary, §354.6 is backward-looking, applying in this case to address wrongs that were committed by private actors under political regimes *that no longer exist*.

The statute does not authorize any attempt to investigate the government of any foreign nation. And neither the statute – nor this litigation – focuses on current policies of any government. Japan's Constitution and laws condemn slavery, and no one is trying to change that. *See* Japan Const. art. 18.

Applying *Zschernig*'s analysis, §354.6 should be sustained. The Ninth Circuit's sweeping holding that

federal war powers preempt all claims arising during times of conflict should be reviewed, and corrected.

2. The Decision Below Upsets the Constitutional Balance of State and Federal Power for the Benefit of International Wrongdoers

This Court's review is needed because the *Deutsch* decision upsets the traditional constitutional balance between state and federal power – to the benefit of international criminals, no less – by invoking *Zschernig*'s vague and controversial foreign-affairs preemption to invalidate a state statute designed merely to regulate state-court jurisdiction and the time for filing certain claims.

State law, not federal, properly governs the jurisdiction and procedure in state courts, which as courts of general jurisdiction provide the traditional forum for transitory tort and contract actions – even ones that arise abroad. That Japanese or other foreign corporations may have to face justice before California courts for wrongs they committed elsewhere – even during a time of international conflict – poses no problem when those corporations are doing business in California today.

This Court has long held that "'personal actions, being transitory, may be brought in any place, where the party defendant may be found,' for 'every nation may . . . rightfully exercise jurisdiction over all persons within its domains.'" *Burnham v. Superior Court of California*, 495 U.S. 604, 611 (1990) (plurality) (quoting J. Story, *Commentaries on the Conflict of Laws, Foreign and Domestic* §§554, 553 (3d ed. 1846)). Each state is entitled, moreover, to "determine the limits of the jurisdiction of its courts, the

character of the controversies which shall be heard in them, and specifically how far it will, having jurisdiction of the parties, entertain in its courts transitory actions where the cause of action has arisen outside its borders." *St. Louis, I. M. & S. Ry. Co. v. Taylor*, 210 U.S. 281, 285 (1908). "The state policy decides whether and to what extent the State will entertain in its courts transitory actions, where the causes of action have arisen in other jurisdictions." *General Oil Co. v. Crain*, 209 U.S. 211, 224 (1908); *accord Chalmers v. Baltimore & O. R. Co.*, 207 U.S. 142, 148 (1907).

Thus, "[i]t is not extraordinary for a court to adjudicate a tort claim arising outside its territorial jurisdiction." *Filartiga v. Pena-Irala*, 630 F.2d 876, 885 (2d Cir. 1980); *see Goad v. Celotex Corp.*, 831 F.2d 508, 513 (4th Cir. 1987). Neither is it terribly extraordinary – or unconstitutional – for American courts to adjudicate claims arising in the course of international conflicts or even war. They do so with increasing regularity. *See, e.g., Altmann v. Republic of Austria*, 317 F.3d 954, 974 (9th Cir. 2002) (sustaining suit against the Republic of Austria and its national art gallery for the return of paintings confiscated by the Nazis); *Kadic v. Karadzic*, 70 F.3d 232, 236, 248-51 (2d Cir. 1995) (holding that victims of atrocities committed in Bosnia may sue the leader of Bosnian-Serb forces in an American court); *Linder v. Portocarrero*, 963 F.2d 332, 333 (11th Cir. 1992) (sustaining tort claims against Nicaraguan "Contra" forces for torture and murder during Nicaragua's civil war); *Klinghoffer v. S.N.C. Achille-Lauro Ed Altri-Gestione*, 937 F.2d 44, 47 (2d Cir. 1991) (sustaining claims against the Palestine Liberation Organization for a terrorist murder committed onboard an Italian cruise liner); *Presbyterian Church of Sudan v. Talisman Energy*, 244 F. Supp 2d 289, 298-99, 346-49 (S.D.N.Y. 2003) (sustaining

claims for genocide in the Sudan); *Marootian v. N.Y. Life Ins. Co.*, No. CV-99-12073 CAS (MCx), 2001 U.S. Dist. LEXIS 22274 (Bankr. C.D. Cal. Nov. 30, 2001) (sustaining claims arising out of the Ottoman Empire's "Armenian Genocide" of 1915-1923).

American courts could regularly adjudicate such claims, that is, until the Ninth Circuit issued its remarkable opinion striking down § 354.6 on the ground that letting California courts hear private parties' claims against business corporations currently doing business in California somehow violates the federal power over foreign affairs – merely because the claims arose abroad either "during the years leading up to [a] war" or "during the years of the war itself." 41a.

The notion that claims are constitutionally barred if they arise "during the years leading up to [a] war," 41a, is as broad as it is vague. And it is apt to redound to the benefit of those who commit the most horrible torts. For on the Ninth Circuit's rationale, those who committed grievous wrongs in Bosnia, Afghanistan, or Iraq in the "years leading up to" or during war would be protected from civil liability for their torts. 41a. Suits to hold terrorist organizations and their sponsors liable might be barred too – as an interference with the federal government's power to wage a war on international terrorism.

Something is seriously wrong with a doctrine of constitutional law that protects private businesses and individuals who commit horrid wrongs with the tacit approval of a Hideki Tojo or Saddam Hussein, or who wage terror at the urging of an Osama bin Laden. The federal power over foreign affairs should not mean automatic immunity from suit for those who commit torts in times of conflict.

Common law courts of general jurisdiction "regularly adjudicate transitory tort claims between individuals over whom they exercise personal jurisdiction, wherever the tort occurred." *Filartiga*, 630 F.2d at 885. The Ninth Circuit's opinion improperly eliminates state courts' most fundamental power to do justice, in the very cases that cry out most for justice to be done. This Court's review is needed to restore California's power to define its courts' jurisdiction.

3. The States Are Constitutionally Entitled to Regulate the Time for Filing Suit in Their Courts

Acknowledging *Taiheiyo Cement*'s holding that §354.6 creates no new substantive claims, the Ninth Circuit objected that the statute nonetheless "revived" claims that had lapsed. 21a, 33a. Yet our nation has long operated on the premise – drawn from longstanding international law – that because limitations period are procedural in character, local forums are entitled to apply their own local limitations periods, even to claims arising in other locales and under the law of other jurisdictions. *Sun Oil Co. v. Wortman*, 486 U.S. 717 (1988); *Wells v. Simonds Abrasive Co.*, 345 U.S. 514, 516-17 (1953). As part of this power, state legislatures are constitutionally empowered to change limitations periods, and even to revive barred claims. *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 311-12 (1945). Once again, the Ninth Circuit's opinion upsets the traditional constitutional balance – by revoking this power.

This Court held in *Sun Oil* that from the "original understanding" of our Constitution, states have had plenary authority over their own statutes of limitation – an authority that "has gone essentially unchallenged

since." *Sun Oil*, 486 U.S. at 726, 730. It was unchallenged, that is, until the Ninth Circuit struck §354.6 down, as interfering with the federal power over foreign affairs.

The Ninth Circuit's holding finds support neither in our Constitution nor in principles of international law and foreign affairs. Applying the local forum's limitations period without regard to where – or under what law – the underlying claims arose was "the rule in international law at the time the Constitution was adopted," when "there was no other developed body of conflicts law to which courts in our new Union could turn for guidance." *See Sun Oil*, 486 U.S. at 723-24; *M'Elmoyle v. Cohen*, 38 U.S. (13 Pet.) 312, 326-27 (1839) (on choice of limitations periods "the lex fori must prevail"); *Le Roy v. Crowninshield*, 15 F. Cas. 362, 365, 371 (No. 8,269) (C.C.D. Mass. 1820) (Story, J.) (collecting cases).

This rule remains a fundamental part of our constitutional jurisprudence – governing relations among the several states, under the Full Faith and Credit clause, as well as in international matters. *See Sun Oil*, 486 U.S. at 723-26. Limitations periods involve a choice of local rules that, consistent with the "well understood rights of nations," is committed to a forum state's sovereign power, to be exercised by it without fear that any other nation or state might take offense. *M'Elmoyle*, 38 U.S. (10 Pet.) at 327-28; *see Sun Oil*, 486 U.S. at 724-26.

The notion that following the standard rule of both international law, *M'Elmoyle*, 38 U.S. (10 Pet.) at 327-28, and our own Constitution, *Sun Oil*, 486 U.S. at 724-26, improperly treads upon the federal power over foreign affairs is a strange one, to say the least. One would think

California free to establish any limitations period it chooses, without fear of unduly offending foreign sovereigns, let alone upsetting the constitutional balance of powers.

The Ninth Circuit ruled to the contrary, apparently disturbed that California could alter its law to "revive" or "resurrect" claims for wartime wrongs. *See* 21a, 22a, 33a, 49a. "This new rule profoundly alters the likelihood that such actions will succeed," the Court wrote, "by not only extending the statute of limitations for claims that were timely when the statute took effect (although we doubt that any such claims existed), but, far more important, by reviving claims that were already time-barred." 21a, 33a.

This overlooks the fact that the states are, in fact, constitutionally empowered to revive claims long barred. This Court holds that "where lapse of time has not invested a party with title to real or personal property, a state legislature, consistently with [constitutional due process], may repeal or extend a statute of limitations, even after right of action is barred thereby, restore to the plaintiff his remedy, and divest the defendant of the statutory bar." *Chase*, 325 U.S. at 311-12; *see Campbell v. Holt*, 115 U.S. 620, 627-28 (1885). Statutes reviving a cause of action survive equal protection attack if merely rationally related to the achievement of legitimate governmental ends. *See G.D. Searle & Co. v. Cohn*, 455 U.S. 404, 408 (1982).

Although the Ninth Circuit presumed the California Legislature acted with some invidious and improper purpose of conducting "foreign policy," the truth is that California has often extended limitations periods to revive barred claims, when justice appeared to require it. Some of

those claims arose abroad – including ones related to the Armenian Genocide of 1915-1923, *see* Cal. Civ. Proc. Code §354.4(c), to Holocaust-era insurance policies, *see* Cal. Civ. Proc. Code §354.5(c), and for World War II-era slave labor, *see* Cal. Civ. Proc. Code §354.6(c). But others surely did not. California retroactively extended the limitations period for certain claims related to the 1994 Northridge earthquake, for example.[6] It has repeatedly extended the time for filing particular sexual-molestation claims – both in 1986,[7] and again in 1994.[8]

Under California law, as under this Court's precedents, "[s]tatutes of limitation in civil matters are procedural, and the Legislature has the power to revive even time-barred common law causes of action." *Society of Cal. Pioneers v. Baker*, 43 Cal. App. 4th 774, 784, 50 Cal. Rptr. 2d 865, 871 (1996); *see Chase*, 325 U.S. at 311-12; *Campbell*, 115 U.S. at 627-28.

This Court's review is needed to restore that power.

VI. CONCLUSION

For all the foregoing reasons, a writ of certiorari should issue, so that this case may be fully briefed and argued on the merits of the question presented.

---

[6] Cal. Civ. Proc. Code §340.9; *see Bialo v. Western Mut. Ins. Co.*, 95 Cal. App. 4th 68, 71, 115 Cal. Rptr. 2d 3, 5 (2002).

[7] *See Leibig v. Superior Court*, 209 Cal. App. 3d 828, 830-31, 257 Cal. Rptr. 574, 575-76 (1989).

[8] *See Tietge v. Western Province of the Servites, Inc.*, 55 Cal. App. 4th 382, 385-86, 64 Cal. Rptr. 2d 53, 54-55 (1997); *Lent v. Doe*, 40 Cal. App. 4th 1177, 1183, 47 Cal. Rptr. 2d 389, 392 (1995).

Respectfully submitted,

MILBERG WEISS BERSHAD HYNES & LERACH LLP
WILLIAM S. LERACH
ERIC ALAN ISAACSON
(*Counsel of Record*)
FRANK J. JANECEK
PATRICK W. DANIELS
JOSEPH D. DALEY
401 B Street, Suite 1700
San Diego, CA 92101
Telephone: 619/231-1058

MILBERG WEISS BERSHAD HYNES & LERACH LLP
ALBERT H. MEYERHOFF
355 South Grand Avenue, Suite 4170
Los Angeles, CA 90071
Telephone: 213/617-9007

ALTSHULER, BERZON, NUSSBAUM, RUBIN & DEMAIN
MICHAEL RUBIN
LINDA LYE
177 Post Street, Suite 300
San Francisco, CA 94108
Telephone: 415/421-7151

BARTKO, ZANKEL, TARRANT & MILLER
JOHN J. BARTKO
WILLIAM I. EDLUND
ROBERT H. BUNZEL
900 Front Street, Suite 300
San Francisco, CA 94111-1427
Telephone: 415/956-1900

LAW OFFICES OF LI YANG
LI YANG
83 Maiden Lane, 13th Floor
New York, NY 10038
Telephone: 212/809-2228

Counsel for Petitioners

DATED: June 4, 2003